Cr.App.(S.J) No.482 of 2007
with
Cr.App.(S.J) No.480 of 2007
with
Cr.App.(S.J) No.508 of 2007
with
Cr.App.(S.J) No.510 of 2007
with
Cr.App.(S.J) No.746 of 2007

Against the judgment of conviction and order of sentence dated 11.4.2007 passed by the Additional Sessions Judge VIII-cum-Special Judge, C.B.I, Dhanbad in R.C.No.2(E) of 1998 (D).

Brij Bhushan..... .....Appellant (Cr.App.No.482 of 2007)

1.Aloke Kumar Guha @ A.K.Guha
2.Devendra Kumar Sinha
@ D.K.Sinha
3. Chandra Mohan Prasad.....Appellants(Cr.App.No.480 of 2007)

P.C.Manjhi
@ Prayag Chandra Manjhi.....Appellant(Cr.App.No.508 of 2007)

Parimal Kumar Banerjee..... Appellant (Cr.App.No.510 of 2007)

Nemi Chand Jain..... Appellant (Cr.App.No.746 of 2007)

V E R S U S

State of Jharkhand through C.B.I..... .....Respondent

For theAppellant:M/s.B.M.Tripathy,Sr.Advocate(Cr.App.508/07)
and Sanjay Kumar, Advocate
For the Appellants:M/s.P.P.N.Rai, Sr.Advocate (Cr.App.480/07)
and P.K.Deomani,Advocate
For the Appellant :Mr.Shailesh, Advocate (Cr.App.No.746/07)
For the Appellant :Mr.Indrajit Sinha, Advocate
(Cr.App.No.482/07)
For the Appellant : M/s.Kaushik Sarkhel (Cr.App.No.510/07)
and Ranjan Kumar, Advocate
For the C.B.I. : Mr. Mokhtar Khan, Advocate

P R E S E N T
THE HON'BLE MR. JUSTICE R. R. PRASAD

R.R.Pd., J. All these appeals arising out of the same judgment were heard together and are being disposed of by this common judgment.

These appeals are directed against the judgment of conviction and order of sentence dated 11.4.2007 passed in R.C.No.2(E) of 1998(D) whereby and whereunder the appellants Brij Bhushan,Aloke Kumar Guha @ A.K.Guha, Devendra Kumar Sinha@ D.K.Sinha, Chandra Mohan Prasad,

P.C.Manjhi@ Prayag Chandra Manjhi and Parimal Kumar Banerjee were found guilty for the offences under Sections 420 read with Section 120B, 467 read with Section 120B, 468 read with Section 120B, 471 read with Section 120B, 477A read with Section 120B and also under Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act and were sentenced to undergo rigorous imprisonment for three years for the offence under Section 467 read with Section 120B and to pay fine with default clause. Further they were sentenced to undergo rigorous imprisonment for two years and to pay fine with default clause for each of the offences under Sections 420 read with Section 120B, 468 read with 120B, 471 read with Section 120B and 477A read with Section 120B and further to go rigorous imprisonment for three years for the offence under Section 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act. All the sentences were ordered to run concurrently.

The appellant Nemi Chand Jain on being found guilty for the offences under Sections 420 read with Section 120B, 467 read with Section 120B, 468 read with Section 120B, 471 read with Section 120B was sentenced to undergo rigorous imprisonment for seven years for the offence under Section 467 read with Section 120B with fine with default clause. Further he was sentenced to rigorous imprisonment for three years with fine with default clause for each of the offences under Sections 420 read with Section 120B, under Section 468 read with Section 120B and under Section 471 read with Section 120B of the Indian Penal Code. All the sentences were ordered to run concurrently.

It is the case of the prosecution that an information was received by the C.B.I. to the effect that the appellant Nemi

Chand Jain, Director of M/s.Data Cables Pvt.Ltd. having entered into a criminal conspiracy with unknown persons cheated State Bank of India, SIB Branch, Dhanbad fraudulently and dishonestly by inducing them to deliver to the tune of Rs.1.40 lacks approx. in the matter of discounting of 17 bills of M/s. Data Cables Pvt. Ltd. raised at BCCL, Dhanbad without actually supplying the materials.

It has been further alleged that M/s. Data Cables Pvt. Ltd. was enjoying cash credit (bill) limit of Rs.140 lacs with State Bank of India, SIB Branch, Dhanbad. M/s. Data Cables Pvt. Ltd. and its Director, appellant, Nemi Chand Jain presented 17 bills mentioned in the FIR to the bank valued at Rs.2,01,53,981/- approx. along with forged/fake receipt in token of the delivery of mining cables to various units of BCCL, Dhanbad. The Bank believing the aforesaid bills submitted by M/s. Data Cables Pvt. Ltd. to be genuine, discounted the bills to the extent of 70% of the face value of the bills and credited the amount to C.C.bills account of M/s.Data Cables Pvt. Ltd. which was subsequently withdrawn fraudulently and dishonestly.

It has further been alleged that the Bank after discounting the bills sent the same to BCCL for realization of the proceeds but BCCL disowned the bills and returned the same unpaid to the Bank as the materials mentioned in the bills had not been received at various units of BCCL. Thus, it has been alleged that the accused persons committed offence under Sections 420, 467, 471 read with Section 120B of the Indian Penal Code.

On such allegation, a case was registered as R.C No.2(E) of 1998(D) under Sections 420, 467, 471 of the Indian Penal Code against Nemi Chand Jain, M/s. Data Cables Pvt. Ltd and unknown persons.

When the matter was taken up for investigation by P.W.18, it was found that the appellant, Nemi Chand Jain was the Director of the firm, M/s. Data Cables Pvt. Ltd. which was manufacturing cables etc. and was supplying the same to BCCL. The said appellant, Nemi Chand Jain was enjoying cash, credit stock facility of Rs.272 lacs and bill credit facility for Rs.140 lacs in SBI Main Branch since 1991.

The Investigating Officer made enquiry over the matter relating to submission of the bills by M/s. Data Cables Pvt. Ltd. and mode of payment whereby it was found that on supply of cables to BCCL bills used to be submitted to the SBI by M/s. Data Cables Pvt. Ltd. On submission of the bills, it were being entered into bill register. When the said amount used to be credited in the cash credit stock account, the said amount was to be debited from bill account. Upon amount being credited in C.C. account 75% of the amount credited would be advanced to the party by the Bank. Meanwhile, the bills submitted to the Bank were to be sent to the Finance Section of BCCL for its payment. After verification of the bills and on being satisfied that the materials have been supplied and the bills accompanied all the relevant documents, payments used to be made to the Bank itself. That arrangement of making payment to the Bank had been made on the basis of power of attorney executed by M/s.Data Cables Pvt. Ltd. in favour of the Bank.

At the same time, it was also found that as per the agreement entered into in between M/s. Data Cables Pvt. Ltd. and the Bank, if the bills submitted by M/s. Data Cables Pvt. Ltd., upon which 75% of the amount used to be advanced to the party, are not paid by the BCCL by 90th day from submission of the date of bills, the Bank was supposed to make reverse entry in the account. Meaning thereby that the bill

amount was to be debited from the cash credit account of M/s. Data Cables Pvt. Ltd. In spite of such stipulations being there, when 17 bills submitted by M/s. Data Cables Pvt. Ltd. to the Bank upon which 75% of the bills amount were advanced to M/s. Data Cables Pvt. Ltd., were not paid by 90th day, the Bank officials did not make reverse entry for a considerable period, as a result of which M/s. Data Cables Pvt. Ltd. kept enjoying with the amount which had been advanced to it and thereby the Bank was put to loss.

During course of investigation, C.B.I did find that the appellants, Brij Bhushan, the then Chief Manager, Chandra Mohan Prasad, Chief Manager, A.K.Guha and D.K.Sinha, the then Field Officers who were responsible in crediting the bill amount of 17 bills in cash credit account of M/s. Date Cables Pvt. Ltd. did not make reverse entry after expiry of 90th day. At the same time, the Investigating Officer did also find that when the bills were not paid within 90 days, information regarding payment of the bills was sought by the Bank officials from BCCL but the then Additional Chief Finance Manager, P.K.Banerjee and Finance Manager, P.C.Manjhi sat over the matter and did not give reply to the letters and also reminders in order to facilitate the appellant, N.C.Jain to continue with enjoyment of the money which were advanced to it against 17 bills.

Upon submission of the charge sheet, when the accused persons were put on trial, C.B.I examined as many as 18 witnesses. During trial, Investigating Officer did depose about the manner in which 75% of the bills amount were being advanced on submission of the bills. P.W.3 has also deposed that advances were to be made on submission of the bills but if the bills are not paid within 90 days, reverse entry was supposed to be made. He has gone further to say that in many

cases reverse entry was made but it was made after much delay. P.W.17 & P.W.18 have also said that no reverse entry was made ever after 90th day, in spite of bills being not paid. Evidences were also led to the effect that when payment was not made of the bills within 90 days, information was sought from BCCL regarding non-payment of the bills but as per P.W.16, no reply was sent to the Bank about non-payment, though the appellant, P.C.Manjhi and B.K.Jha had received the letters. However, according to P.W.18, reply was given after offence was committed. Reason for not making payment has been explained by P.W.16, who has stated that since the bills were incomplete, being not accompanied with the necessary vouchers, it were not paid. At the same time, he has stated that no system was prevailing of giving reply of the letter to the Bank. Evidences were also led to the effect as it appears from the evidence of P.W.18, I.O that within 90 days reverse entry had not been made, though, reverse entry was made on 19.1.1995 of the bills submitted in the year 1993 and thereupon the amount was declared as NPA for which recovery a case was filed before Debt Recovery Tribunal. The evidence has also come on the record that entire money which had been declared NPA has been recovered. On such evidences learned Special Judge did find the Bank Officials, namely, Brij Bhushan, Chandra Mohan Prasad, A.K.Guha, D.K.Sinha guilty of not making reverse entry even after expiry of 90 days, in spite of bills being not paid. At the same time, learned Judge also found P.K.Banerjee, the then Additional Chief Finance Manager, BCCL as well as P.C.Manjhi, Finance Manager, BCCL to have conspired with other accused as they in spite of receiving letters from the Bank seeking information about payment of the bills did not reply to the Bank, rather sat tight over the matter.

Further the court did find that the appellant, N.C.Jain without supplying the materials to BCCL submitted 17 bills on the basis of which advance to the extent of 75% of the bill amount was taken and further in spite of payment being not made within 90 days, reverse entry was not made by the Bank officials which they did in connivance with this appellant to put the appellant in advantageous position. Accordingly, all the appellants were found guilty of the offences as aforesaid.

Being aggrieved with the judgment of conviction and order of sentence, these appeals have been preferred.

Mr.Shailesh, learned counsel appearing for the appellant, Nemi Chand Jain, the then Director of M/s. Data Cables Pvt. Ltd. submits that there has been memorandum of understanding (Ext.13/7) In between M/s. Data Cables Pvt. Ltd and the Bank whereupon two accounts namely, bill account and cash credit stock account were opened. As per the stipulation of the memorandum of understanding, as soon as the bills are raised against the BCCL, that amount is credited in the bill account. As soon as that amount is credited in the cash credit account, the said amount used to be debited from bill account entitling the appellant to have have advances to the extent of 75% of the bill amount. Further stipulation is there under the memorandum of understanding that if the bills submitted for its payment by the BCCL are not paid normally within 90 days, reverse entry was supposed to be made in the cash credit account and thereby the said amount used to be debited which, according to the case of the C.B.I, was not made after 90th day, though evidence has come that in most of the cases, reverse entry had been made but those entries had definitely been made after considerable delay but that delay never caused any loss to the Bank as the Bank in terms of the stipulation made in

the memorandum of understanding had charged penalty and also interest over the amount after expiry of 90 days of the submission of the bills, when bills were not paid and that apart, the Bank has realized the entire amount which had been declared as NPA under the order passed by Debt Recovery Tribunal and the said amount had been realized before lodgment of the case. That apart, the property of worth Rs.9.5 crores which had been mortgaged has been taken possession of by the Bank in the year 1994. Therefore, the Bank can never be said to have been cheated in any manner by the appellant.

Learned counsel further submits that so far forgery aspect of the matter is concerned, it has never been the case of the prosecution that any forged document was used or on the basis of the forged document, advances had been made to the appellant, rather the C.B.I has made out a case of forgery on the mistaken fact that since the bills were raised without supplying the materials to the BCCL, those bills were forged document but that cannot be a case of forgery, even if the bills were raised without supplying the materials as in terms of clause 43(o) of the memorandum of understanding, the appellant was entitled to have advances to the extent of 70% of the bill amount on submission of the bill itself, meaning thereby that as soon as the bills are submitted, that amount of the bills is to be credited without there being any certificate by the BCCL of supplying materials. Therefore, if the bills submitted by the appellant remain unpaid, 17 bills submitted can never be said to be forged/fake bills but the learned Special Judge did not take into account all these aspects of the matter, rather it got swayed by the case of the C.B.I that since the bills were submitted without supplying the materials, all those bills were fake/forged bills.

Mr.B.M.Tripathy, learned Sr. counsel appearing for the appellant,P.C.Manjhi submits that the appellant, who at the relevant point of time was posted as Finance Manager, BCCL, has been convicted for various offences of the Indian Penal Code and also under the Prevention of Corruption Act on the allegation that the appellant deliberately did not send reply to the letters issued by the Bank officials in the year 1995 wherein request had been made to send back the bills after its verification. Since no reply was made by the appellant, C.B.I has taken this action as an act of conspiracy on the part of this appellant with the Bank officials so that reverse entry be not made by the Bank officials in the account of M/s. Data Cables Pvt. Ltd. but the fact was that certain bills had been forwarded by the Bank to the Purchase and Finance Department not at the time when the appellant was holding office but it had been sent before his predecessors. Those bills were not found to be complete as the bills sent by the Bank were not accompanying challan, receipt, store receipt voucher, Test Certificate, Guarantee Certificate, Excise Duty, Gate Pass, Certificate of Director General Mines Safety, certificate of Depot Officer. In such situation, those bills were not cleared and as such, it could be sent to the Bank which would be evident from the evidence of P.Ws. 15 and 16 and thereby the question of appellant hatching conspiracy with the other officials of the Bank does not arise.

Further it was submitted that as per the stipulation made under the memorandum of understanding when the bills submitted does not get clearance from the department of BCCL, officials of the Bank should have made reverse entry after expiry of 90th day without making any correspondence with the BCCL and thereby absolutely there has been no

culpability on the part of this appellant and hence, he deserves to be acquitted.

Apart from the submissions which were advanced on behalf of P.C.Manjhi, it was submitted on behalf of Parimal Kumar Manjhi that there has been no agreement in between BCCL and the Bank officials that as soon as the bills would be submitted by the Bank, it should be processed within 90 days so that information be sent to the Bank. On the other hand, stipulation was there in the memorandum of understanding to the effect that Bank official was supposed to make reverse entry after expiry of 90th day when confirmation of payment of bill is not received.

It was submitted on behalf of the appellant that the Investigation Officer in his evidence at paragraph 44 has itself admitted that incomplete bills were never supposed to be processed. Further as per the evidence of P.Ws.15 and 16 bills submitted by the DCPL were not processed and the bills which were sent by the Bank were not accompanying the relevant documents and thereby even if no reply was made to the letter of the Bank, the appellant cannot be said to have conspired with the Bank officials and other accused persons but the court below has taken the act of silence on the part of this appellant to be an act of conspiracy which is quite illegal as neither there had been any rule nor the precedence was there of giving reply to the letter of the Bank promptly.

Mr.Sinha, learned counsel appearing for the Brij Bhushan would submit that the appellant, at the relevant point of time, was posted as Chief Manager, SBI, SIB Branch, Dhanbad, who had been made accused on the allegation that in spite of bills being not paid, reverse entry was not made in the cash credit account of the appellant and thereby M/s. Data Cables Pvt. Ltd.

went on enjoying the facility of the advances made against the bill amount but for that the appellant cannot be held responsible as on 82nd day of the submission of the bills, account itself had been transferred to other Bank and therefore, before expiry of 90 days, question of making reverse entry in the account does not arise.

Further it was submitted that the appellant in his statement made under Section 313 of the Code of Criminal Procedure has categorically stated that it was not the job of this appellant to make entry of reverse data. This fact has not taken into account in spite of the fact that there is no evidence to the effect that it was the duty of this appellant to make reverse entry.

In this regard, it was further submitted that even if it is assumed that the duty was of this appellant of making reverse entry and if that was not done within 82 days, it can at best be taken to be an act of negligence on the part of the appellant as in the circumstances, it can never be gathered that ill-intention was there on the part of the appellant in not making reverse entry and thereby the appellant in view of the decision rendered in a case of ***S.V.L.Murthy vs. State represented by CBI, Hyderabad [(2009) 6 SCC 77]*** cannot be held guilty for the offence under the Indian Penal Code as well as under the Prevention of Corruption Act.

It was further submitted that it has come in evidence that after reverse entry was made in the account of M/s. Data Cables Pvt. Ltd. the amount which was due to be paid by M/s. Data Cables Pvt. Ltd had already been realized and the bank had taken over the possession of the mortgaged property in the year 1994 itself whereas the case had been lodged in the year 1998 which fact goes to indicate that there was no mens rea on

the part of the appellant to put the Bank to loss by preparing and passing of credit slip putting M/s. Data Cables Pvt. Ltd to the advantageous position.

Moreover, when the amount had already been realized before lodging of the case, one cannot be convicted for the offence under Section 409 of the Indian Penal Code in view of the decision rendered in a case of ***Narendra Pratap Narain singh and another vs. State of U.P. (AIR 1991 SC 1394).***

Mr.P.P.N.Rai, learned Sr. counsel appearing for the appellant, A.K.Guha and two others would submit that these three appellants have been convicted on the basis of evidence adduced by P.W.9 and P.W.11 wherein P.W.9 has deposed that Devendra Kumar Sinha (appellant no.2 in Cr.App.No.480 of 2007) has prepared credit voucher worth Rs.4056066/- whereas A.K.Guha, as per the evidence of P.W.11 has passed the debit voucher worth Rs.45,99,144/- but that cannot be a ground for conviction of the appellant as neither there had been stipulation under the memorandum of understanding or it was the practice of the Bank that the voucher be prepared and be passed only when bills are accompanied by the relevant documents, rather as per the memorandum of understanding, one is supposed to proceed with the bill on its submission whether it is accompanied by the relevant voucher or not. The C.B.I has not come forward to put forth the case that under the practice of the Bank or under any relevant rule, bills be passed only when it accompanies relevant document and thereby the court did commit illegality in recording conviction against the appellant.

As against this, Mr.Khan learned counsel appearing for the C.B.I submits that admittedly the appellants who were the Bank officials did not make reverse entry after expiry of 90th

day from the day of submission of bills upon which advances had been taken by the co-convict, Nemi Chand Jain, even though the bills remained unpaid.

In this regard, it was further submitted that bills had been raised in the year 1993 whereas reverse entry has been made on 19.1.1995. Till then Nemi Chand Jain was enjoying with loan facility taken on the basis of bills which had been submitted without supplying the material and thereby it is clear cut case of conspiracy which the accused persons hatched among themselves for putting the Bank to loss.

It was further submitted that so far Officers of BCCL are concerned, they had also connived with the Bank officials as well as Nemi Chand Jain and hence, they did not give any information to the Bank with respect to those bills upon which Nemi Chand Jain had taken advance. They purposely remained silent so that Nemi Chand Jain go on enjoying credit facility.

Under the circumstances, the court below is absolutely justified in recording the judgment of conviction and order of sentence which needs not to be interfered with.

The appellant, Nemi chand Jain was the Director of M/s.Data Cables Pvt. Ltd. which was manufacturing cables etc. and was supplying the same to the BCCL. The said firm had had bill account as well as cash credit stock account. As per the agreement, whenever bills were raised against BCCL, the bill amount would be credited in the bill account. As soon as bill amount is credited in the cash credit account of stock of the firm, the said amount would be debited from the bill account and thereby the firm would be entitled to have have advances to the extent of 75% of the bill amount. This was the practice which was going on in between the firm, M/s.Data Cables Pvt. Ltd. and the Bank.

Further arrangement was that the bills which were being submitted to Bank by M/s. Data Cables Pvt. Ltd. it were being sent to BCCL for its payment to the Bank itself by virtue of stipulation made under power of attorney executed by M/s.Data Cables Pvt. Ltd. in favour of the Bank. In course of business, 17 bills were submitted, on the basis of which advances were made to the extent of 75% of the bill amount. The bills submitted remained unpaid by the BCCL and therefore, as per the case of the CBI which has been made on the basis of one of the terms and conditions e.g. 44(a) of the memorandum of understanding, the Bank officials should have made reverse entry after expiry of 90th day. Admittedly, reverse entry was not made on 91st day and therefore, accusation was made against the appellant, Nemi Chand Jain, the Director of M/s. Data Cables Pvt. Ltd as well as Bank officials that reverse entry was not made by the Bank officials in conspiracy with Nemi Chand Jain who was enjoying the facility which he has taken on the basis of submission of the bills. At the same time, accusation was also made against the Bank officials as well as Nemi Chand Jain that these bills were not accompanying voucher and other related document and thereby on this basis, advances should not have been given to the firm and since bills have been processed without there being document, those bills have been taken tobe forged. It is beyond my comprehension as to how those 17 bills raised by M/s. Data Cables Pvt. Ltd can be said to be forged when it had not accompanied the relevant documents. Even if without supplying the material if the bills have been raised, that cannot be said to be forged document. Such instances are never covered within the definition of forgery as has been given under Section 464 of the Indian Penal Code.

Furthermore, one of the conditions which is there under clause 43(o) never does stipulate that the bill should compulsorily accompany the related challan, accepted delivery notes etc. The said clause reads as follows:

> *" where at the request of the Borrower the Bank has agreed to include in the facilities granted under this Agreement credit sales made by the Borrower to the customers of the Borrower whereby finished goods are directly sent to the customers at their requests and copies of the relaive invoices with or without receipted challens or accepted delivery notes, receipt notes, inspection notes, are tendered by the Borrower to the Bank as evidencing dispatch of finished goods and where under such circumstances or any other circumstances the Borrower receives payment of the bills the Borrower shall immediately deposit the proceeds of the bills and the sale proceeds of the goods covered by invoices directly received by the Borrower or the agents of the Borrower whether in cash or by cheques or by any other mode of payment in the said account with the Bank towards payment of the outstanding in respect of the advances granted on the evidence of such invoices;"*

From its perusal it is evident that bills can be submitted with or without challan, delivery notes etc. If the bills have been submitted without there being any related document and if that has been processed by the appellant, no illegality can be attached.

Now coming to other aspect of the matter of not making reverse entry on 91st day by the Bank officials would amount any criminal act on their part.

In this respect, I may refer to one of the clauses of memorandum of understanding which is there as clause 44(a) which reads as follows:

> *"The Borrower hereby confirms that at the request of the Borrower the Bank has agreed in its sole and absolute discretion to discount usance bills with usance ordinarily not exceeding 90 days, drawn on the*

Borrower by the suppliers of goods and accepted by the Borrower for an amount at any time not exceeding the drawee bills discounting limit granted within the overall limit (hereinafter referred to a 'the Bills').

From its reading it does appear that one can have advances on the bill amount up-till ordinarily 90 days which means that it was not mandatory on the part of the Bank officials to make reverse entry on the very next 91st day.

Further stipulation regarding consequence of non-payment of the bill is also there in clauses 43 (p), (q) and (t) which read as follows:

(p)"*The Borrower shall repay the Bank's advances within such number of days as may be stipulated by the Bank of the utilization of the advances by the Borrower on each occasion whether or not the payment of the said bills/invoices is received by the Borrower or if the bills are returned unpaid for any reason whatsoever the Borrower shall reimburse the Bank immediately on receipt of the Bank's advice;*

(q) The Borrower shall indemnify the Bank and keep the Bank harmless and indemnified at all times against all losses damages actions costs (as between Advocate and client) charges or expenses which maybe made against or sustained or incurred by the Bank (and whether paid by the Bank or not) as a result of or in consequence of the Bank having agreed to purchase/negotiate/discount/correct the said bills as also as a result of or in consequence of the Bank through any of its offices or correspondents in India and elsewhere guaranteeing any irregularities or discrepancies that may be existing in the documents relating to the said bills in connection therewith.

(t) Where the drawees return unpaid the bills/invoices to the Borrowers direct, the Borrower shall immediately on receipt thereof return the bills/invoices to the Bank and the Bank's acceptances thereof shall be without prejudice to its right of recovery of the amounts covered by the bills/invoices from the Borrower."

From these clauses it is evident that consequences which the borrower would suffer on account of non-

payment of bills are there. It is the case of the appellant which has also been admitted by some of the witnesses P.W.9 that on account of non-payment of bills the Bank was charging penalty according to rules of Bank. Further P.W.18 has said that reverse entry was made on 19.1.1995 and the amount was declared as NPA for which case was filed before Debt Recovery Tribunal. It has also come on record that the amount had already been recovered before the criminal case was filed.

In that view of the matter, the appellant, particularly the Bank officials cannot be said to have not made reverse entry for putting N.C.Jain to advantageous position by allowing him to avail facility. The other reason on account of which reverse entry was not made may be on account of the stipulation made under clause 44(a) which never mandated to make reverse entry immediately after expiry of 90 days as it has been noted that the word 'ordinarily' has been used.

Further it has come that in the evidence as has been testified by P.W.10 that payments of the bill were depended upon the availability of the fund before the BCCL.

Under the circumstances, imputation of hatching conspiracy can not be attached, if reverse entry has not been made.

Further I do find that the appellants, A.K.Guha, D.K.Sinha and Chandra Mohan Prasad have been convicted on account of the fact that either they had prepared credit voucher or passed the bills which were not accompanying with the related vouchers. That act cannot fasten him with any guilt for the reason that it was never required as has

been noted under clause 43(o) that the bill should accompany with any voucher. Therefore, conviction of those persons are absolutely bad.

So far the appellant, Brij Bhushan is concerned, he has simply been convicted for the reason that he being the Chief Manager of SBI, SIB Branch, Dhanbad did not make reverse entry and allowed co-convict N.K.Jain to have credit facility but it has never been shown by the prosecution that it was the duty of the appellant to make reverse entry. Moreover, reverse entry could have been recorded only after 90 days of non-payment of the bill whereas as per the case which has been put forth by the appellant that before expiry of 90 days the account itself had been transferred to other Bank and thereby he could not have made reverse entry before expiry of 90 days as only after expiry of 90 days reverse entry could have been made in the account of the appellant but the court below did not consider all these aspects of the matte while recording order of conviction.

Accordingly, I do find that the court committed illegality in recording the conviction against the appellants.

So far the appellant Parimal Kumar Banerjee and P.C.Manjhi are concerned, they have been convicted for the reason that they should have responded to the letter and reminder sent by the Bank officials asking information about payment of the bills and also on the ground that bills were not cleared within 90 days. It has come in the evidences of P.W.15 and P.W.16 that bills were not cleared as it had not accompanied certain documents. Further it has come in the evidence of P.W.16 that no such practice was prevailing for giving reply. Therefore, if no such reply has been given, the appellant cannot be fastened with the

responsibility in absence of any such rules of giving reply to the letters of the Bank.

Under the circumstances, the court was absolutely wrong in recording judgment of conviction and order of sentence against them.

Further going into the matter relating to the case of Nemi Chand Jain, it has already been recorded by referring to the clause that no wrong was committed in having advance on the bills submitted even if it did not accompany the related document.

Further it has been noted that in terms of memorandum of understanding when bills, upon which advances were allowed, remained unpaid, penalty was imposed and even the amount which had been declared NPA had been realized and thereby he can never be said to have committed any offence of cheating.

So far offence of forgery is concerned, I failed to understand how the appellant can be said to have committed offence of forgery when no forged document have been used by them. Simply for the reason that the bill submitted did not accompany the relevant documents nor supply was made, advances to the extent of 75% were availed of, the appellants cannot be said to have committed offence of forgery as such act never falls within the definition of forgery.

Furthermore, as I have already stated that under the agreement, one can have had advances on the bills without there being any related vouchers.

In such situation, the appellants seem to have wrongly been convicted for the offences as stated above.

Under the circumstances stated above, the judgment of conviction as well as order of sentence passed against all the appellants is hereby set aside.

In the result, all the appeals are allowed. Consequently, the appellants are acquitted of all the charges levelled against them.

(R.R.Prasad, J.)

Jharkhand High Court, Ranchi
The 28th Februaray,2014,
N.Dev/N.A.F.R